

CLERK US BANKRUPTCY COURT
DISTRICT OF OREGON

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5 Of Attorneys for Committee of Parishioners

6 UNITED STATES BANKRUPTCY COURT
7 FOR THE DISTRICT OF OREGON

8 In re

NO. 04-37154-elp11

9 ROMAN CATHOLIC ARCHBISHOP OF
10 PORTLAND IN OREGON, and successors, a
corporation sole, dba the ARCHDIOCESE OF
11 PORTLAND IN OREGON,

Adversary Proceeding
No. 04-3292-elp

12 Debtor.
13
14 TORT CLAIMANTS COMMITTEE,
15 Plaintiff,
16 v.
17 ROMAN CATHOLIC ARCHBISHOP OF
18 PORTLAND IN OREGON, and successors, a
corporation sole, dba the ARCHDIOCESE OF
19 PORTLAND IN OREGON,
20 Defendant.
21

**RESPONSE TO THE OBJECTION TO
CLASS CERTIFICATION FILED BY
GEORGE McCARTIN**



21 In response to the Objection to Class Certification (the "Objection") filed by George
22 McCartin, the designated class representatives, John Rickman, Glenn Pelikan and Johnston
23 Mitchell, individually and on behalf of all others similarly situated; St. Andrews Church
24 (Portland), as represented by its pastor, Rev. Charles Lienert, St. Anthony Church (Tigard), as
25 represented by its pastor, Rev. Leslie M. Sieg, and St. Juan Diego Church, as represented by its
26

1 pastor, Rev. John Kerns, individually and on behalf of all parishes (the "Class Representatives"),
 2 through designated class counsel, Perkins Coie LLP, state as follows:

3 The Objection raises a number of points that merit clarification. The Objection points out
 4 that the Committee of Catholic Parishes, Parishioners and Interested Parties in the Archdiocese
 5 of Portland in Oregon (the "Committee of Parishioners") has not been duly elected by all
 6 individual Catholic parishioners and parishes in Western Oregon to be their representative. The
 7 Objection argues that the Committee of Parishioners is therefore not authorized to serve as the
 8 representative of a class of all parishes and parishioners in Western Oregon.

9 First, as noted above, the Class Representatives are three individual parishioners and
 10 three parishes (as represented by their pastors), not the Committee of Parishioners. Second, the
 11 Court has followed the procedures set forth in Fed. R. Civ. Pro. 23 (as applicable here by virtue
 12 of Fed. R. Bankr. Pro. 7023) in certifying the defendant class for purposes of this proceeding.
 13 Rule 23 does not require an election, much less a unanimous election process, for approval of
 14 class representatives or certification of a class. FRCP 23. The Court ordered broad notice and
 15 procedural protections for class members that arguably exceed those required by Rule 23. These
 16 procedural protections include the right to opt out of the class and assert views that may differ
 17 from those disclosed by the Class Representatives in the Notice of Class Action (the "Notice").
 18 At the Court's direction, the Debtor disseminated the Notice widely through direct mail and
 19 publication, an approach designed to reach as many of the estimated 390,000 Catholics in
 20 western Oregon as possible. As of this date, counsel is aware of only a single objection having
 21 been filed.

22 The Objection also asserts that certain class members may disagree with the positions
 23 disclosed by the Class Representatives in the Notice. The Objection argues that such a lack of
 24 unanimity deprives the Class Representatives of typicality and of the ability to fairly and
 25 adequately represent the interests of the class, both requirements under Rule 23. However,
 26 unanimity is not required to meet the typicality and fair and adequate elements of Rule 23. *See*,

1 e.g., *Cummings v. Connel*, 316 F.3d 886, 896 (C.A. 9 (Cal.), 2003) ("this circuit does not favor
 2 denial of class certification on the basis of speculative conflicts); *Blackie v. Barrack*, 524 F.2d
 3 891, 909 (9th Cir. 1975) (class members might have differing interests at later stages of
 4 litigation, but that "potential conflicts" do not present a valid reason for refusing to certify a
 5 class). At this stage, there is no evidence of a division among class members.

6 Moreover, the additional protections the Court has provided to class members, primarily
 7 in the form of an opt out right after disclosure by the Class Representatives of their intended
 8 legal approach, support the Court's "typicality" and "fair and adequate" findings. Had the claims
 9 and the proposed legal approach disclosed by the Class Representatives not met with the
 10 approval of the class members receiving the Notice, it is reasonable to expect that dissatisfied
 11 class members would opt out of the class. Only a very small percentage of class members
 12 (approximately 281 of 389,000 parishioners) exercised their opt out right, minimizing the
 13 concern that any division might exist. *See Status Report Regarding Class Membership.*

14 The Objection questions the need for any parish or parishioner participation in this
 15 proceeding, suggesting that no objection to the inclusion of parish property in property of the
 16 estate should be raised by parishes and parishioners. This raises a question of strategy, not a true
 17 division within the class.

18 [W]here the asserted division between the named plaintiffs and unnamed
 19 class members is simply over a question of strategy rather than a conflict
 20 inherent in the structure of the class, denial of class certification has
 21 depended upon a strong showing that the disagreement was genuine and
 22 fundamental, and that a majority of the class members did not favor
 23 litigation.

24 *Fraser v. Major League Soccer, L.L.C.*, 180 F.R.D. 178, 181 -182 (D. Mass. 1998), *citing*
 25 *Bailey v. Ryan Stevedoring Co.*, 528 F.2d 551, 553 (5th Cir. 1976) (declining to certify class
 26 where named plaintiffs' goal to merge racially segregated unions was opposed by 204 of
 27 approximately 230 black union members who filed petition with court); *Davis v. Roadway
 28 Express, Inc.*, 1977 WL 850 (S.D.Tex. Apr. 27, 1977) (denying certification when 17 of 23

1 putative class members "affirmatively" demonstrated their "lack of desire to be associated" with
2 the lawsuit).

3 The Class Representatives share many of the sentiments expressed by Mr. McCartin in
4 his declaration. They believe that playing an active role in the bankruptcy adversary proceeding
5 is the most appropriate way to ensure a just and fair result.

6 DATED: October 7, 2005.

7 **PERKINS COIE LLP**

8 By 

9 Steven M. Hedberg, OSB No. 84244

10 Douglas R. Pahl, OSB No. 95047

11 Class Counsel

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4- RESPONSE TO OBJECTION TO CLASS STRUCTURE FILED
BY GEORGE McCARTIN

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CLERK US BANKRUPTCY COURT
DISTRICT OF COLUMBIA

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **RESPONSE TO THE OBJECTION TO**
CLASS CERTIFICATION FILED BY GEORGE McCARTIN by causing a full, true,
PAID. b DOCKETED
and correct copy thereof to be sent by the following indicated method or methods, on the date
set forth below, pursuant to the attached Service List:

by electronically serving via U. S. District Court's CM/ECF system.

100

by **hand delivery** to those attorneys unable to receive electronic transmissions.

1

by **mailing** in a sealed, first-class postage-prepaid envelope and deposited with the United States Postal Service at Portland, Oregon.

10

by sending via **overnight courier** in a sealed prepaid envelope.

1

by **faxing** to the attorney at the fax number shown on the attached Service List, which is the last-known fax number for the individual's office.

840

by **faxing** to the attorney at the fax number shown on the attached Service List, which is the last-known fax number for the individual's office.

DATED: October 7, 2005.

PERKINS COIE LLP

By Douglas R. Pahl
Douglas R. Pahl, OSB No. 95047
Class Counsel

**Tort Claimants Committee v.
Roman Catholic Archbishop of Portland
in Oregon, and Successors, a corporation sole dba
the Archdiocese of Portland in Oregon
Adversary Proceeding No. 04-03292-elp**

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